

able regulations and prohibitions imposed in the interest of the community. As an example of a valid restraint on the conduct of an individual, Maryland courts have repeatedly held that a failure to obey a reasonable and lawful request by a police officer, fairly made to prevent a disturbance to the public peace, constitutes disorderly conduct. *Harris v. State*, 237 Md. 299, 206 A. 2d 254; *Sharpe v. State*, 231 Md. 401. In each case, the Court held that the gist of the crime of disorderly conduct is the doing and saying, or both, of that which offends, disturbs, incites, or tends to incite a number of people gathered in the same area. *Bachelor v. State*, 3 Md. App. 626, 240 A. 2d 623.

In failing to limit the police officers of Charles and Queen Anne's Counties from issuing "cease" orders in only those instances when "lingering" or "loitering" might endanger the public peace (as is already provided in Article 27, Section 123 of the Maryland Code, 1967 Replacement Volume), the Bill is not only in derogation of the common law crime of disorderly conduct, but also arbitrarily renders otherwise innocent conduct as criminal in nature.

When subjecting House Bill 1435 to close scrutiny, as it should be when it attempts to strip a citizen's liberties by a mere *malum prohibitum* test, it would be possible to convict a citizen who refused the "cease" demand of an officer, while standing on a street corner watching the traffic of people without obstructing same; while innocuously sitting on a bench in a public park; while "lingering" in a drug store waiting for a prescription to be filled; or while taking too much time in finishing his meal at a restaurant that is "open to the public".

When considering the constitutionality of a provision similar to the Bill under consideration, the Supreme Court of the United States in *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 15 L.ed. 2d 176, 86 S.Ct. 211, examined an ordinance which made it, ". . . unlawful for any person to stand or loiter upon a street or sidewalk . . . after having been requested by any police officer or move on." Mr. Justice Stewart, in delivering the opinion of the Court invalidating the ordinance, stated:

"Literally read, . . . this ordinance says that a person may stand on a public sidewalk in Birmingham only at the whim of any police officer of that city. The constitutional vice of so broad a provision needs no demonstration. It 'does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat'. *Cox v. Louisiana*, 379 U.S. 536, 579, 13 L.ed. 2d 471, 501, 85 S. Ct. 453."

As written, therefore, House Bill 1435 violates Article 23 of the Maryland Declaration of Rights by depriving a person of his liberty and freedom of locomotion without due process; violates the First and Fourteenth Amendments of the United States Constitution as it arbitrarily deprives a person of his liberty and freedom of locomotion consistent with a citizen's privileges and immunities; and violates the due process clause provisions of both Constitutions by failing to make a distinction between conduct calculated to do harm and conduct essentially innocent.

Very truly yours,

/s/ Francis B. Burch,

Attorney General.